

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

THE CITIZENS UTILITY BOARD	)	
and	)	
ENVIRONMENTAL DEFENSE FUND	)	Docket No. 15-0156
	)	
Proceeding for Approval of a Tariff Implementing	)	
a Community Solar Pilot Program	)	

**APPLICATION FOR REHEARING OF THE CITIZENS UTILITY BOARD AND  
ENVIRONMENTAL DEFENSE FUND**

NOW COME the Citizens Utility Board (“CUB”) and the Environmental Defense Fund (“EDF”) (“CUB/EDF”) pursuant to the Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code §200.880, and the Public Utilities Act (“PUA” or “the Act”), 220 ILCS 5/10-113, to file this Application for Rehearing in the instant proceeding. The Commission’s Final Order, issued on July 28, 2015, incorrectly places the decision on whether to offer a meter aggregation program of the type proposed here in the sole discretion of the an electricity provider such as the Commonwealth Edison Company (“ComEd”) after “having considered it” without requiring any explanation or evidence of consideration.<sup>1</sup>

As a result, CUB/EDF request rehearing so that the Commission’s Final order can be corrected for two errors of law and one factual conclusion. The Order is incorrect in finding that:

1) Section 16-107.5 of the PUA does not provide for net metering where the generating facility is not located on the customer’s premises as would be the situation with CUB/EDF’s proposed community solar pilot (Final Order at 11); 2) that Section 16-107.5(l) places the decision on

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<sup>1</sup> The Final Order does not reach any conclusion on whether virtual net metering of the type proposed by CUB/EDF in the instant proceeding is a competitive service. Final Order at 12. As such, CUB/EDF do not request rehearing on the issues raised by the Illinois Competitive Energy Association (“ICEA”) in this proceeding but reserve the right to respond to such issues in any future litigation associated with this proceeding. See CUB/EDF Response to Motion to Dismiss at 7-10 (May 13, 2015).

meter aggregation projects such as on community solar projects in the hands of an electricity provider who need only “consider” such projects (Final Order at 12); and 3) virtual net metering is a “new” service within the meaning of the PUA (Final Order at 12).

The Commission states that it agrees with the General Assembly’s conclusion that net metering can encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois’ energy resource mix, and protect the Illinois environment. Final Order at 11, citing 220 ILCS 5/16-107.5(a). The Commission states that it further agrees with CUB/EDF that the benefits of advanced metering infrastructure (“AMI”) and Smart Grid technologies should be made available to customers “without delay.”

*Id.* However, the Order mistakenly concludes that it lacks the authority to order the implementation of a community solar pilot program which utilizes virtual net metering. Since the Commission “places the decision” on such projects in ComEd’s hands without qualification or direction, the Final Order achieves exactly what it elsewhere states it does not want: ComEd may “merely consider” meter aggregation programs like the one proposed here and decline to offer them without explanation. This achieves a result in contradiction to the Commission’s claims it favors private investment in renewable resources which take advantage of ComEd’s AMI deployment and create opportunities such as community solar projects. Indeed, under the Commission’s paradigm, ComEd need do only what it has done to date: state simply that it has considered “such services but has not elected to provide such services at this time.” ComEd Motion to Dismiss at 5.<sup>2</sup>

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<sup>2</sup> ComEd offers its position that “until the ratemaking, cost recovery, and cost shifting issues stemming from the reliance on kilowatthour-based rates for the recovery of distribution facilities and certain supply costs and current net metering policies are addressed,” it concludes the “time is not right to pursue an expansion of net metering services into virtual net metering.” ComEd Motion to Dismiss at 6. Since the Commission did not note any of these questions as having bearing on its conclusions, CUB/EDF will not

The Commission should reverse that conclusion. The Commonwealth Edison Company (“ComEd”) is currently making significant “modernization” investments, and customers are paying for those investments in rates. 220 ILCS 5/16-108.5. These investments – AMI and Smart Grid technologies – can be used to bring the benefits of community solar projects to customers and capitalize on the Illinois policies which call for substantially greater investments in distributed solar resources. CUB/EDF Ex. 1.0 at 9.

It is undisputed that the Commission has general authority for “any matters covered by the provisions of the [Public Utilities] Act, or by any other Acts relating to public utilities,” 220 ILCS 5/10-101, and the authority to direct utilities to do what is reasonably necessary to accomplish a legislative objective. *Abbott Lab. Inc. v. Illinois Commerce Comm’n*, 289 Ill.App.3d 705, 712, 682 N.E.2d 340, 347-348 (1st Dist.1997), citing *Lake County Bd. of Review v. Prop. Tax Appeal Board*, 119 Ill.2d 419, 427, N.E.2d 459 (1988). The Commission should exercise that authority here to advance the stated goals of Illinois policy to bring additional customer investment in distributed solar resources and direct ComEd to undertake a community solar pilot which capitalizes on the new technology investments paid for by ComEd customers. As described below, Section 16-107.5 does indeed allow for net metering where the generating facility is not on the customer’s own premises, and the Commission should require ComEd to cooperate with a community solar pilot program which utilizes virtual net metering.

### **PROCEDURAL HISTORY**

CUB/EDF filed a petition to approve a tariff implementing a community solar pilot program that utilized virtual net metering through a new rider, Parallel Operation of Community Generating Facilities with Virtual Net Metering (“Rider POGVNM”) on July 24, 2015. This

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address them here any further than what CUB/EF have already done in this proceeding. CUB/EDF Response to Motion to Dismiss at 6.

program would allow for groups of customers to collaboratively own eligible renewable generating facilities, and share in the attendant billing credits from those facilities. *See* CUB/EDF Ex. 1.1.

ComEd filed a motion to dismiss on April 30, 2015, and CUB/EDF filed a response to the motion on May 13, 2015. The Illinois Competitive Energy Association (“ICEA”) filed a limited reply in support of ComEd’s motion on May 20, 2015, and ComEd filed its reply on May 20, 2015. The Administrative Law Judge filed a proposed order on June 5, 2015, and CUB/EDF filed a brief on exceptions to that proposed order on June 19, 2015. The Staff of the Illinois Commerce Commission (“Staff”) also filed a brief on exceptions on June 19, 2015. Reply briefs on exception were filed by ComEd, Staff and CUB/EDF on June 26, 2015. The Commission’s Final Order was issued on July 28, 2015.

### **LEGAL STANDARDS**

The purpose of requiring issues to be raised in the petition for rehearing is to inform the Commission and opposing parties of alleged legal and factual errors in the Commission's order. *Citizens Util. Bd. v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 135-36 (1995). When interpreting a statute the primary function of this court is to ascertain and give effect to the intent of the legislature. *Bus. & Prof'l People for Pub. Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 205-11 (1991), citing *People v. Beam*, 74 Ill.2d 240 (1979); see *MCI Telephone Corp. v. Illinois Commerce Comm'n*, 168 Ill.App.3d 1008 (1988). The best indicator of the legislature's intent is the express language of the statute, which should be given its plain and ordinary meaning. *Id.* When the language of a statute is clear and unambiguous, it must be applied without resort to other aids of construction. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 19, 16 N.E.3d 801, 808 *appeal denied*, 21 N.E.3d 713 (Ill.

2014), citing *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 215 Ill.2d 219, 238 (2004).

In construing a statute all statutory language should be given effect. *Business & Prof'l People for Pub. Interest v. Illinois Commerce Comm'n*, 136 Ill.2d 192, 243 (1989). Furthermore, statutory provisions should be construed so as to produce a consistent, unified whole rather than inconsistent and contradictory parts. *Miller v. Department of Registration & Education*, 75 Ill.2d 76, 81 (1979). No part of the statute should be rendered superfluous or meaningless. *City of Chicago v. Illinois Commerce Comm'n*, 233 Ill.App.3d 992, 1001 (1st Dist. 1992), citing *In re Application of County Collector* 132 Ill.2d 64, 72 (1989).

**I. The PUA allows for meter aggregation, including for the purposes of community solar.**

The Commission's apparent conclusion that meter aggregation programs are not allowed by Section 16-107.5(e) of the PUA is contradictory to the plain language of the statute, and requires ignoring an entire sub-section. The Final Order states that, because subsection Section 16-107.5(b) defines "eligible customers" as those with generation on their own premises, the statute does not provide for meter aggregation where generation is not on a customer's premise. Final Order at 11, citing 220 ILCS 5/16-107.5(b). While the Commission acknowledges that Section 16-107.5(l) directs ComEd to consider allowing meter aggregation for net metering on community solar projects, the same Order concludes that the same statutory language is "insufficient to overcome" the language of 16-107.5(b) which references renewable electricity generation facilities "located on the customer's premises." *Id.*

Subsection (l) makes clear that its purpose is to provide an alternative to the definition of eligible customer in subsection (b):

Notwithstanding the definition of "eligible customer" in item (i) of subsection (b) of this Section, each electricity provider shall consider whether to allow meter

aggregation for the purposes of net metering on: (1) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility, such as a community-owned wind project, a community-owned biomass project, a community-owned solar project, or a community methane digester processing livestock waste from multiple sources; and 2) individual units, apartments, or properties owned or leased by multiple customers and collectively served by a common eligible renewable electrical generating facility, such as an apartment building served by photovoltaic panels on the roof. For the purposes of this subsection (l), "meter aggregation" means the combination of reading and billing on a pro rata basis for the types of eligible customers described in this Section.

220 ILCS 5/16-107.5(l) (emphasis added).

When interpreting a statute, the primary function of the Commission (and any court) is to ascertain and give effect to the intent of the legislature. *Bus. & Prof'l People for Pub. Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 205-11, (1991) ("BPI II"), citing *People v. Beam*, 74 Ill. 2d 240 (1979); *MCI Telephone Corp. v. Illinois Commerce Comm'n*, 168 Ill. App. 3d 1008 (1988). The language used in the statute is the primary source for determining legislative intent. *People ex rel. Gibson v. Cannon*, 65 Ill. 2d 366 (1976). If the language is certain and unambiguous this court need not refer to the legislative history, but must enforce the statute as enacted. *BPI II*, 146 Ill. 2d at 207. Where the statutory language is ambiguous and the legislative history is not determinative, this court must attempt to resolve the conflict by reference to the entire statute. *Id.*

In construing a statute, all statutory language should be given effect. *Bus. & Prof'l People for Pub. Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 243(1989) ("BPI I"). Courts construe statutes relating to the same subject with reference to one another in order to give effect to all provisions. *Henrich v. Libertyville High School*, 186 Ill.2d 381, 392, 712 N.E.2d 298 (1998). Ultimately, no part of the statute should be rendered superfluous and no statutory provision should be interpreted so as to render another provision meaningless. *City of Chicago v. Illinois Commerce Comm'n*, 233 Ill. App. 3d 992, 1001 (1st Dist. 1992), citing *In re*

*Application of County Collector* 132 Ill. 2d 64, 72 (1989). Statutes must also be interpreted to avoid impractical or absurd results. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 26, 16 N.E.3d 801, 809-10, *appeal denied*, 21 N.E.3d 713 (Ill. 2014), citing *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 21, 354 Ill. Dec. 825, 958 N.E.2d 1021.

CUB/EDF's proposal for a community solar pilot program utilizes meter aggregation (through the term of art "virtual net metering") as the means by which customers can participate in a community solar project. The PUA defines "meter aggregation" as the combination of reading and billing on a pro rata basis for the following types of customers defined as eligible under subsection (l): "properties owned or leased by multiple customers that contribute to the operation of" "a community-solar project", or "individual units, apartments, or properties owned or leased by multiple customers collectively served by a common eligible resource such as "an apartment building served by photovoltaic panels on the roof." 220 ILCS 5/16-107.5(l). Virtual net metering allows customers to receive net metering credits from projects that generate electricity in a location other than where it is consumed. CUB/EDF Ex. 1.0 at 6. It is net metering made "virtual" because it mimics for multiple customers the reading and billing associated with net metering under subsection (l) the same reading and billing associated with a single customer under subsection (b).

Expressing one thing in a statute can impliedly exclude another thing, but it does not always so; in fact, Illinois courts have noted that the exclusionary implication is heavily dependent on context and common sense. *Ameren Illinois Company v. Illinois Commerce Comm'n*, 2015 IL App (4th) 140173, ¶124 (June 2, 2015) ("*Ameren Illinois*"), citing *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n*, 203 Ill. App. 3d 424, 438 (1990). It is clear from several

sections that the PUA allows meter aggregation where the generation source is not on the customer's premise. For example, subpart (1) refers to "properties", plural, rather than premise, and makes clear that such properties can be owned or leased by multiple customers. 220 ILCS 5/16-107.5(1)(1). Subpart (2) specifically gives the example of a rooftop solar resource shared by multiple customers, all of whom are collectively served that rooftop resource. 220 ILCS 5/16-107.5(1)(2). Since the "best evidence of legislative intent is the plain and ordinary sense of the words the legislature used," *Ameren Illinois*, 2015 IL App (4th) 140173 ¶113, "it is entirely appropriate to look to the dictionary for a definition." *People v. Bingham*, 2014 IL 115964, ¶ 55, 381 Ill. Dec. 472, 10 N.E.3d 881; see also *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 29, 354 Ill. Dec. 869, 958 N.E.2d 1065 (where a statute does not define a term, this court will look to a dictionary to give a term its ordinary and popularly understood meaning). Merriam-Webster's defines "community" as a unified body of individuals, including "people with common interests living in a particular area." <http://www.merriam-webster.com/dictionary/community> (accessed June 18, 2015). Reading subsection (1) to apply only to multiple customers who share one premise renders subpart (1) superfluous and leads to the absurd result that the multiple customers repeatedly referred to in subsection (1) must all be on one single premise regardless of where a "community" project is located.

The Commission's own net metering rulemaking includes suggested changes which focus on meter aggregation for the purposes of net metering. See *Initiating Order*, Appendix at 15, ICC Docket No. 15-0273 (April 8, 2015). Proposed new Part 465.90 would have electricity suppliers, which includes either an alternative retail electric supplier or the utility, *Id.* at 2, separately consider applications for meter aggregation for the purposes of net metering, *Id.* at 15. There would be no need to consider applications for meter aggregation for the purposes of net



metering if the ICC's own Staff did not appear to believe that meter aggregation of the type envisioned by CUB/EDF's community solar pilot project is permissible under the PUA.

For these reasons, the Commission erred in concluding that subsection (b) of Section 16-107.5 bars a community solar pilot project utilizing virtual net metering as proposed by CUB/EDF.

## **II. The Commission can direct ComEd to undertake a community solar pilot.**

In its Final Order, the Commission appears to conclude that it cannot direct ComEd to do more than "consider" meter aggregation programs, Final Order at 11, and does conclude that it cannot direct ComEd to implement a "new service". Final Order at 12. The Commission does not require any evidence of consideration of proposals such as the one presented here by CUB/EDF. The Commission concludes that "if ComEd decides to proceed with such a [meter aggregation] program," the decision to do so is placed in the hands of the electricity provider. Final Order at 11-12. Taken together, this appears to mean that the Commission has concluded it cannot direct ComEd to consider meter aggregation programs, and it cannot direct ComEd to offer a meter aggregation using virtual net metering. This conclusion is wrong as a matter of law.

If it were true that only a utility could initiate a rate, there would be no need for Section 16-103 of the PUA at all. Given the Commission's responsibility is to read a statute so as to not render any part of it superfluous or meaningless, *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414, 422 (2002), its decision that it cannot direct ComEd to offer a meter aggregation program or indeed any new service cannot be sustained.

As a result, there is no reason to conclude at this point that the Commission cannot direct ComEd to modify its existing tariffs to accommodate new arrangements in a pilot. *See e.g. In Municipality of Princeton v. Illinois Commerce Comm'n*, 17 Ill.App.3d 812, 821, 308 N.E.2d

625, 632 (1974) (ICC direction of fuel service changes); *Inst. of Shortening & Edible Oils, Inc. v. Illinois Commerce Comm'n*, 45 Ill. App. 3d 98, 103-04, 359 N.E.2d 231, 235 (1977). The Commission not only has the authority and power necessary to supervise all public utilities, *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 60 (1<sup>st</sup> Dist. 2010), but has “active functions of policy making and supervision.” *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill. 2d 607, 618 (1958) (The Commission is “not just an umpire.”). This means not only may the Commission initiate hearings on its own motion, but it has wide discretion in shaping proceedings brought by others. *Id.* Indeed, the Commission has wide authority to consider public utilities’ actions beyond any specific conduct questioned in a docket, even a rate case filed under Section 9-201. *Illinois Power Co. v. Ill. Commerce Comm’n*, 382 Ill. App. 3d 195, 203 (2008) (ICC addressing and directing changes to delivery service appropriate in context of natural gas rate case).

The Commission should grant rehearing to correct the Final Order’s conclusion that it lacks the authority to direct ComEd to do more than simply consider meter aggregation but instead to undertake a community solar pilot program.

### **III. Virtual Net Metering is Not a New Service within the Meaning of the PUA**

The Commission concludes that Section 16-103(e) of the PUA bars the Commission from directing ComEd to offer virtual net metering or metering aggregation for a community solar pilot program since doing so would effectively constitute a “new service”. Final Order at 12. Section 16-103, which addresses the service obligations of electric utilities during and after Illinois’ transition to a competitive marketplace, states that the Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and

shall not require an electric utility to offer any competitive service. 220 ILCS 5/16-103(e). The services named in that section are any tariffed service offered to a retail customer that a utility offered as “a distinct and identifiable service on the effective date of this amendatory Act of 1997” until the service is declared competitive or abandoned. *Id.* In turn, a “competitive service” is any service declared competitive, a contract service or any services, other than tariffed services, that are related to, but not necessary for, the provision of electric power and energy or delivery services. *Id.*

Any restrictions on services contained in Section 16-103 must be considered within the broader framework and purpose of Section 16 and indeed the entirety of the PUA. First, the residential class has not been declared a competitive class pursuant to Section 16-113 of the PUA. 220 ILCS 5/16-113. Any restriction on the Commission’s ability to direct new utility services for competitive classes is not applicable.

Second, it is undisputed ComEd already offers net metering under Rider POGNM. Final Order at 12. ComEd itself considers virtual net metering “an expansion of net metering services.” ComEd Motion to Dismiss at 6. However, the Commission concludes that the CUB/EDF proposed rider, Rider POGVNM, is “sufficiently beyond” that to “constitute a new service.” *Id.* No further explanation is given in the Proposed Order as to how it is “sufficiently beyond” or what the standard for a service being “sufficiently beyond” an existing service so as to be new is.

In the past, when confronted with a new and potentially disruptive technology, the Commission has ordered ComEd to pilot the use of such of technologies (e.g. AMI) to look at the costs and benefits for ComEd and its customers and inform the Commission before such technologies are used. *See In Re Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final

Order at 138-139 (Sept. 10, 2008). Distributed solar resources are no different than those technologies. Indeed, the Commission did not at that time consider new pricing programs or the use of AMI technology a new service. *See In Re Commonwealth Edison Co.*, ICC Docket No. 09-0263, Final Order at 3, 8-10 (discussing the use of new technology to test new customer applications and pricing programs) (Oct. 14, 2009).

Here again the Commission is confronted with a request to expand an already offered service. However, the service provided – that of net metering – is not a new service. Though the resource might be new – community solar as compared to home rooftop solar – the services outlined in Rider POGVNM are identical to the services offered under Rider POGNM: billing and crediting according to the existing net metering laws. *See CUB/EDF Ex. 1.0* at 11, 15, 18-22 (discussing how proposed Rider POGVNM compares to existing Rider POGNM). The only thing Rider POGVNM requires is that ComEd bill and credit net metering services to customers who do not have a qualifying distributed resource on their property but instead participate in one qualifying distributed resource located somewhere else within ComEd’s service territory. *Id.*

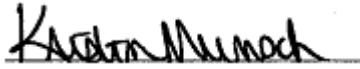
Nothing about CUB/EDF’s proposal to use virtual net metering in the community solar programs changes the nature of ComEd’s existing Rider POGNM. CUB/EDF proposed that the terms of eligibility, customer classes and compensation remain as ComEd has them now. *Id.* The only change is the ability of ComEd’s customers without their own homes on which solar can be built to participate in net metering programs and benefit from solar resources. Since virtual net metering is not in fact a new service but at most an expansion of an existing service, the Commission should grant rehearing to correct the Final Order accordingly.

## CONCLUSION

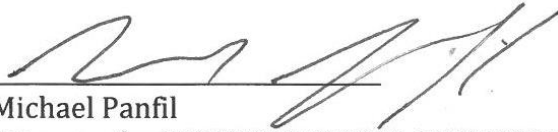
For the reasons discussed herein, the Commission should grant rehearing to reverse the erroneous conclusions of law and fact identified herein.

Dated: August 26, 2015

Respectfully submitted



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